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Pfizer Seeks Dismissal of Texas Lawsuit Alleging False and Deceptive Marketing of COVID Vaccines

Pfizer is seeking to shift a lawsuit filed by Texas Attorney General Ken Paxton accusing the drug giant of "false" and "deceptive" marketing of its COVID-19 vaccines to federal court, arguing the 99th Judicial District Court for Lubbock County, where the lawsuit was filed, lacked jurisdiction.

By **Michael Nevradakis, Ph.D.**

28

CORONAVIRUS
COVID-19
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VACCINE

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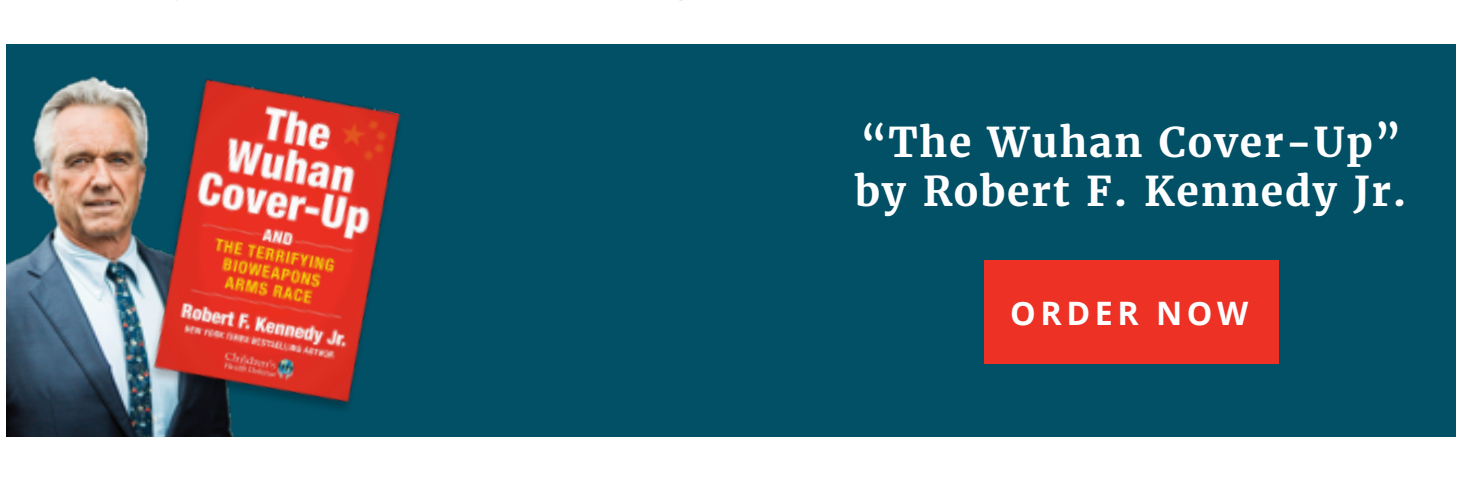
Pfizer is seeking to shift a lawsuit filed by Texas Attorney General Ken Paxton accusing the drug giant of "false" and "deceptive" marketing of its COVID-19 vaccines to federal court, according to everythinglubbock.com.

In a Dec. 28, 2023, filing with the 99th Judicial District Court for Lubbock County, where the lawsuit was filed, Pfizer argued that the court lacked jurisdiction and that the case should be moved to the U.S. District Court for the Northern District of Texas.

Pfizer also seeks the dismissal of the lawsuit based on several claims, including protection under the liability shield provided by the Public Readiness and Emergency Preparedness Act, or PREP Act, First Amendment free speech protections and "immunity" because it acted on behalf of the federal government to produce the vaccines.

"Pfizer is not liable because Pfizer did not make any statement nor take any action that had the capacity or tendency to deceive consumers," the company claimed in its filing.

The lawsuit, filed Nov. 30, 2023, alleges Pfizer made "false, misleading, or deceptive" claims about its COVID-19 vaccine, tried to intimidate and censor critics of the vaccine, and violated the Texas Deceptive Trade Practices Act in marketing claims the company made about the efficacy, duration of protection and ability of its COVID-19 vaccine to prevent transmission.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The lawsuit also alleges Pfizer cited misleading statistics, concealed negative data and made unsupported statements about efficacy against variants like Delta.

Paxton, who first announced in May 2023 that his office would investigate COVID-19 vaccine manufacturers Pfizer, Moderna and Johnson & Johnson, is seeking over $10 million in civil penalties, plus injunctive relief barring Pfizer from making claims about vaccine efficacy similar to those challenged in the lawsuit.

Legal and pharmaceutical experts disputed Pfizer's claims, and said that the case may have significant implications for others who seek to challenge the PREP Act liability shield.

Ray Flores, senior outside counsel for Children's Health Defense, told The Defender, "There are consumer protection laws in every state, including Texas, that afford robust protection" to consumers.

"If the court finds that PREP precludes the state court filing, then the case will be heard in federal court. However, I don't believe the PREP Act cancels these state law fraud claims," he said.

Flores added:

> "The federal court would first have to decide if the case belongs there. If it does, then that would indicate that the PREP Act could apply and would therefore preclude the state's case. I seriously doubt that will be the case. I believe the AG has successfully circumvented the PREP Act."

Writing on Substack, Sasha Latypova, a former pharmaceutical industry executive with 25 years of experience in pharmaceutical research and development, said, "Not surprisingly, Pfizer is using their EUA [Emergency Use Authorization] countermeasure status and PREP Act coverage among other arguments to move this case to the federal court."

Pfizer needs to move the case to a federal court because then the company will have "absolutely nothing to worry about," Latypova said. "When criminals investigate themselves and find themselves guilty, they pat themselves on the back for the job well done and pay themselves a bonus," she wrote.

Latypova told The Defender that, in an attempt to prove that its claims related to the COVID-19 vaccines were "truthful," Pfizer will claim that for vaccines covered under EUA, "truth is the opinion of the secretary of the U.S. Department of Health and Human Services (HHS) that they may be effective."

"HHS Secretary asked FDA [U.S. Food and Drug Administration] Commissioner to issue the EUA on the basis that these injections may be effective, and Pfizer repeated the U.S. Government statements about them, which is true — most advertising and promotion was done by U.S. government agencies," she said.

"Therefore, they will claim, again, that this was part of fulfilling the obligations under the defense contract with the U.S. government," she added.

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Pfizer claims it is a 'covered person' under the PREP Act

According to Pfizer's filing, "Pfizer's COVID-19 vaccine is a 'covered countermeasure' and Pfizer is a 'covered person' under the PREP Act," as stated in the HHS secretary's March 17, 2020, "Declaration Under the PREP Act for Medical Countermeasures Against COVID-19."

This argument is based, in part, on Pfizer's claim that Pfizer is a corporate entity that qualifies as a "person," under legal precedent established by a federal appeals court in 1998 in a case under which a government contractor who supplied the U.S. government with Agent Orange, a chemical weapon used during the Vietnam War, was "person" acting under federal authority.

That argument allowed the case in question to be moved to federal court.

The PREP Act, along with the EUA provision of the Federal Food, Drug, and Cosmetic Act (FD&C Act), affects the administration of COVID-19 vaccines and therapeutics and their accompanying liability shield.

The PREP Act declaration immunizes manufacturers, distributors and others from any liability for injuries caused by a covered countermeasure, except in cases of "willful misconduct."

The first COVID-19-related PREP Act declaration was issued by HHS Secretary Xavier Beccera on March 17, 2020, but was made retroactive to Feb. 4, 2020. Eleven amendments to the declaration have followed, the most recent on May 12, 2023. The declaration is set to remain in effect until Dec. 31, 2024, if it isn't subsequently extended.

Flores questioned Pfizer's PREP Act-related claims.

"Pfizer claims that its exaggerated representations are protected by the PREP Act. However, state fraud law is not precluded since the PREP Act protects against loss, which is defined as death, serious bodily injury, etc."

"The PREP act precludes a state law that is 'different from, or is in conflict with [the PREP Act's provisions].' Consumer fraud as alleged in the complaint is not addressed or precluded by the PREP Act," he said.

"Pfizer's motion plays it fast and loose by overlooking the limitations of what can be said about vaccines released under Emergency Use Authorization, and confuses the U.S. government's stated goal of releasing safe and effective vaccines with actually having released them back in December 2020," Flores added.

On her Substack, Latypova questioned Paxton's interpretations of the PREP Act and the Pfizer COVID-19 vaccine's EUA status.

"EUA countermeasures are, by law, NOT investigational: they exist only during the relevant public health emergency announcement (PREP Act declaration) and are exempt from all pharmaceutical regulations that apply to normal drugs," she wrote.

"Paxton did not make that distinction clear in his complaint, albeit he accurately described other aspects of the EUA law. His interpretation of EUA countermeasure status of the covid shots is a bit vague, implying that they are normally FDA approved, but with some corners that were cut in a hurry," Latypova added.

However, Flores said, "The strengths of Paxton's case are the false statements made before any Pfizer products were even licensed. This is a much more straightforward case, brought by a powerful plaintiff, than any previous case. It is clearly the roadmap for consumer fraud litigation."

According to Flores, Pfizer's filing also groups all of its various COVID-19 vaccines together as if they are the same product.

"Pfizer's motion also heavily relies on the false premise that there is only one Pfizer vaccine, when there are many of them and the differences are substantial. The EUA Pfizer-BioNTech and the elusive Comirnaty vaccine are legally distinct," he said, referring to a November 2021 finding by a federal judge that the Pfizer EUA and fully licensed Comirnaty vaccines are not interchangeable.

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Pfizer claims First Amendment free speech rights violated

According to Pfizer, Paxton's lawsuit, which "attempts to hold Pfizer liable for public statements it made concerning the COVID-19 vaccine," represents "an improper attempt by the State of Texas to regulate Pfizer's speech, in violation of the First Amendment."

"Speech, including commercial speech, is protected by the First Amendment so long as that speech is truthful and not misleading," according to Pfizer, which argued that its statements regarding the vaccine were "entirely truthful and based on the information that existed at the time the statements were made."

Pfizer also argued that Texas "has no legitimate interest in regulating Pfizer's truthful speech concerning the COVID-19 vaccine" and that as a result, "the Petition impermissibly burdens Pfizer's First Amendment rights."

Latypova told The Defender that Pfizer accurately argues that "drug marketing regulations do not apply to them" in relation to the COVID-19 vaccine, because "it is an EUA countermeasure" and "not a regulated pharmaceutical."

However, the "standards of truth do apply," she added.

Pfizer argues federal immunity — but also that it is a private entity

Pfizer also claimed that it "acted pursuant to its contract with the United States Government to manufacture an FDA-approved or authorized COVID-19 vaccine and to supply that COVID-19 vaccine to the Government."

As a result, Pfizer said it acted as a "government contractor performing work pursuant to its rated-order contract with the Government" and, accordingly, "is protected from liability under the Derivative Sovereign Immunity doctrine." This means that federal — not state — courts, have jurisdiction over the case, Pfizer argued.

Yet, as Latypova pointed out on Substack, Pfizer claimed later in the same filing that it is a private entity, arguing that "Federal law preempts state law claims when 'it is impossible for a private party to comply with both state and federal requirements.'"

"Even more troubling is Pfizer's assertion that AG Paxton's complaint is barred by the 'Political Question Doctrine,' i.e. they are claiming the court is incompetent to resolve the issue as the matter is non-judiciable," Latypova wrote.

The political question doctrine is a legal rule under which federal courts refuse to hear a case posing a political question, particularly related to an issue that is considered politically charged.

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Michael Nevradakis, Ph.D., based in Athens, Greece, is a senior reporter for The Defender and part of the rotation of hosts for CHD.TV's "Good Morning CHD."

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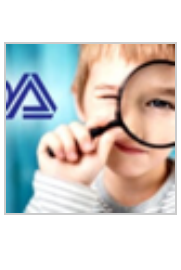
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freedomandjusticeforall
2 days ago
Sounds like there are several 'legal' questions of jurisdiction etc. I hope they win. And to hear Pfizer asserting 'first amendment' rights, while they have systemically squashed the first amendment for THE PEOPLE, is ludicrous.
29 0 Reply • Share ›

ME MCC → freedomandjusticeforall
2 days ago
Amen
3 0 Reply • Share ›

holisticpoet
2 days ago
What Pfizer is really trying to say is that it does not matter how many people are injured or died from their product because they are allowed by law to kill and maim with impunity by the fact that it is written into law. Now that we are aware of this, we need to know that it is up to the judges to decide for humanity if that assertion stands in the light of falsified records which deceived government agency personal or a more enlightened version of reality will be bestowed upon humanity where people are held accountable for their wrongdoing.
26 0 Reply • Share ›

ME MCC → holisticpoet
2 days ago
Since they don't give the same product to the average people that they give their own people and what was reported initially, it is fraud!!
5 0 Reply • Share ›

A. Miller
2 days ago
I wonder how many jurors, judges, witnesses, etc. will die or mysteriously become rich and decided to keep their mouths shut?
21 0 Reply • Share ›

Nod
2 days ago
Courts are corrupt and captured by the globalists. Just like the other two branches of government.

Pfizer wants the supreme court, because the globalsits figured out a long time ago that all you got to own, are the BIG dogs. In the courts, in the government.

Voting, trials, petitions, are just theater for weak minds to cling to.
17 0 Reply • Share ›

Dawn Em
2 days ago
So then sue them as a person, Who did the same things. If Pfizer is a 'person' suing Pfizer is one and the same yes? Maybe sue the government & politicians who said it would protect them from c19 and spreading it. Which is an obvious lie since so many w the c19 shot have gotten sick. And sue them for blaming unvax for the virus, one of the most ridiculous and oxymoronic accusations made during the entire event! Along with making the US public lose millions of dollars
15 0 Reply • Share ›

Jacek R → Dawn Em
2 days ago
I agree that the people who came on camera, and said, "If you get this vaccine, you will NOT get Covid" should bear some responsibility. They were basically bullying, belittling, or threatening those who were uncomfortable with being injected with a "rushed" concoction that was incorrectly called a vaccine.
3 0 Reply • Share ›

Stephen Thomson
2 days ago
"Pfizer also seeks the dismissal of the lawsuit based on several claims, including protection under the liability shield provided by the Public Readiness and Emergency Preparedness Act,"
We always knew big pharma would, no matter what harm caused or deaths caused would hide behind the "prep act".
Disgusting company. Rot in hell for what you have done.
12 0 Reply • Share ›

Brian Johnston
2 days ago
$10 million? is that a misprint. Maybe $10 billion or $10 trillion

What is obvious is that Pfizer shows no remorse.
10 0 Reply • Share ›

ME MCC → Brian Johnston
2 days ago
no, because it is still continuing!!!
2 0 Reply • Share ›

Emily_Jo → Brian Johnston
a day ago
If you look on Wikipedia as to the biggest fines against these entities you'll see it's 2.3 Billion, they have some splainin to do!
1 0 Reply • Share ›

Gary Brown
2 days ago edited
January 6, 2024 Serious Concerns About the COVID Shot and DNA

Florida Department of Health. On December 6, 2023, State Surgeon General Dr. Joseph A. Ladapo sent a letter to the United States Food and Drug Administration (FDA) Commissioner Dr. Robert M. Califf and Center for Disease Control and Prevention (CDC) Director Dr. Mandy Cohen regarding questions pertaining to the safety assessments and the discovery of billions of DNA fragments per dose of the Pfizer and Moderna COVID-19 mRNA vaccines.

https://ifapray.org/blog/se...

OCT. 11, 2021 Texas Gov. Greg Abbott bans any COVID-19 vaccine mandates — including for private employers

Abbott also called on the Legislature to pass a law expanding the ban on vaccine mandates.

https://www.texastribune.or...

SEPT. 10, 2021 Texas sues six school districts that issued mask mandates in defiance of Gov. Greg Abbott's order

Gov. Greg Abbott and Texas Attorney General Ken Paxton have long threatened to sue school districts that defy Abbott's ban on local mask mandates. On Friday, Paxton made good on that threat.

https://www.texastribune.or...
9 0 Reply • Share ›

ME MCC → Gary Brown
2 days ago
At this point, it's fraud, plain and simple.
6 0 Reply • Share ›

Gary Brown → ME MCC
a day ago
Also, scripted as this reveals.

Nov 4, 2019 Event 201 Pandemic Exercise: Segment 4, Communications Discussion and Epilogue Video

Event 201 is a pandemic tabletop exercise hosted by The Johns Hopkins Center for Health Security. The exercise illustrated the pandemic preparedness efforts needed to diminish the large-scale economic and societal consequences of a severe pandemic.

http://www.centerforhealths...

see more
4 0 Reply • Share ›

ME MCC → Gary Brown
a day ago
I agree totally.
2 0 Reply • Share ›

Emily_Jo
a day ago
I think this article on Wikipedia speaks for itself. These companies seem to think they are above the law: https://en.wikipedia.org/wi...
5 0 Reply • Share ›

jann
a day ago
Pfizer's claim that they did not deceive consumers is an obvious lie because of the mere fact that their ads claimed 95% effectiveness. I hope whoever hears this has even an ounce of integrity.
5 0 Reply • Share ›

Emily_Jo → jann
a day ago
If it can be proven they did take part in deceptive practices, then I understand that their immunity from being sued is null and void and they can "once again" be fined. The 2.3 billion they payed out in the past was merely a slap on the wrist. Fining people who have more money than any of us doesn't do much good. More drastic measures need to be taken to stop these "deceptive practices." They are almost untouchable at this time. I think they definitely need to be held accountable for the way they are doing business!
2 0 Reply • Share ›

Emily_Jo → jann
a day ago
Hopefully who ever does hear the case isn't bought and paid for!
1 0 Reply • Share ›

Monika OLAF
2 days ago
In my humble opinion Big Pharma is NOT touchable
and NOT accountable …
this is going on way to long …
Allegedly they were sued for millions in European courts many years ago …
Bribery
Falsified records etc
Sadly they having to MANY politicians in their pockets and they rule.
4 0 Reply • Share ›

Emily_Jo → Monika OLAF
a day ago
They paid out 2.3 billion in fines/damages/payouts for their dishonesty. It's on Wikipedia along with other companies who got caught. They have blown any trust I ever had in them.
2 0 Reply • Share ›

D L
2 days ago
Pfizer is using the government rules to defend themselves. It's going to take suing the government agencies who used these regulations to harm people. The real defendant here is the DoD, NIAID, the FDA, etc. Just like the censorship case where the defendents are suing the Biden Admin, like was done with the successful case against the DoD for the military mandates.
3 0 Reply • Share ›

stevor
2 days ago
Satan seeks dismissal of Godly people saying he's evil
3 0 Reply • Share ›

Ektor
a day ago
If there was 110% certainty of this, fizer would deny it. You see, drug companies always have to base their existence on lies and propaganda because their products are so horrible.

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